IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 7TH NOVEMBER 2007 / 16TH KARTHIKA 1929

Crl.MC.No. 3387 of 2007()

CC.566/2006 of JUDL.MAGISTRATE OF FIRST CLASS, PALA

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(CRIME NO.429/2006 OF PALA POLICE STATION)

PETITIONER: 1ST ACCUSED:

MUKESH DEVASSIA, AGED 39 YEARS,
S/O. DEVASSIA, KANDATHIL HOUSE,
KAVEEKUNNU P.O., PALA.

BY ADV. SRI.M.J.THOMAS
SMT.RUBY K.JOSE

RESPONDENTS: COMPLAINANTS:

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1. **THE CIRCLE INSPECTOR OF POLICE,**
   PALA, REPRESENTED BY THE PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

2. **MARY ANCIL KAPPEN,**
   KAPPIL HOUSE, PONADU KARA, VALLICHIRA, PALA.

BY PUBLIC PROSECUTOR SRI. M.S. BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 07/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KSS

R.BASANT, J

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Crl.M.C.No.3387 of 2007

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Dated this the 7th day of November, 2007

ORDER

The petitioner along with the co-accused faces indictment in a prosecution for offences punishable under Section 420 read with 34 I.P.C. Cognizance has been taken on the basis of a final report filed by the Police. But the petitioner has not received any summons so far, it is submitted. The petitioner has now come to this Court with a prayer that powers under Section 482 Cr.P.C may be invoked to quash the proceedings against the petitioner.

2. I have heard the learned counsel for the petitioner and perused the records. I must alertly remind myself of the nature,quality and contours of the jurisdiction which I am called upon to invoke and exercise. The jurisdiction which is sought to be invoked is the extraordinary inherent jurisdiction available under Sec.482 Cr.P.C. It is by now trite that such jurisdiction has to be invoked sparingly and in exceptional cases only in aid of justice. Such jurisdiction is certainly not to be invoked as a matter of course. The Code contemplates the possibility of a

rare case where allegations are groundless and cognizance being taken on the basis of a final report submitted by the Police. If the charges are groundless, the petitioner is entitled for an order of discharge under Section 239 Cr.P.C. Normally and ordinarily the inductee must resort to the provisions of the Code. Note that this Court in an appropriate cannot invoke the powers under Section 482 Cr.P.C. But sufficient, satisfactory and compelling reasons must be shown to exist to justify the invocation of such powers. I do not find any such reasons in this case. I am of the opinion that it is for the petitioner to appear before the learned Magistrate and seek discharge at the stage of Sec.239 Cr.P.C. The learned counsel for the petitioner submits that if personal presence were insisted rigidly on all dates of posting, that will cause hardship, inconvenience and loss to the petitioner. I find no reason why the learned Magistrate should insist on such personal appearance. The petitioner can appear through counsel and can claim exemption under Section 317 Cr.P.C. He can advance his claim for discharge. Until a decision is taken in the matter and unless the learned Magistrate holds that

charges are liable to be framed, his personal appearance need not be insisted.

This Crl.M.C. is hence dismissed with the above observations.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE